



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

14 श्रावण 1935 (श०)
(सं० पटना 627) पटना, सोमवार, 5 अगस्त 2013

निर्वाचन विभाग

अधिसूचना

19 मार्च 2013

सं० डी1-008/2013-18—भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या-82/बिहार-लो०स०(7/2009)/2012 एवं निर्वाचन अर्जी संख्या-07/2009 में माननीय उच्च न्यायालय, पटना द्वारा दिनांक 06.11.2012 को पारित आदेश/न्याय निर्णय को सर्वसाधारण की जानकारी के लिए पुनः प्रकाशित किया जाता है।

बिहार-राज्यपाल के आदेश से,
आर० के० प्रसाद,
संयुक्त सचिव।

भारत निर्वाचन आयोग

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001 तारीख 10 जनवरी, 2013/20 पौष, 1934 (शक)

सं० 82/बिहार-लो.स./ (4/2009)/2012 : लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा-106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं० 4/2009 में दिये गये उच्च न्यायालय, पटना के तारीख 6 नवम्बर, 2012 के आदेश को प्रकाशित करता है।

आदेश से,
आर० के० श्रीवास्तव,
प्रधान सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

*Nirvachan sadan, Ashoka Road New Delhi-110001 Dated 10th January
2013/20 Pausa, 1934 (Saka)*

No. 82/BR-HP/(7/2009)/2012: In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the 6th November, 2012 of the High Court of Judicature at Patna in Election Petition No. 7 of 2009.

By order,
R. K. SRIVASTAVA,
Principal Secretary,
Election Commission of India.

IN THE HIGH COURT OF JUDICATURE AT PATNA

Election Petition No.7 of 2009

In the matter of an application under Section 81 of the Representation of the People Act, 1951 read with Article 329(b) of the Constitution of India

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Ghanshyam Lai Jamuar, son of late Ram Lakhan Lal Jamuar, resident of Harnahatola, Umardaraj Lane, Lodikatra, P.O. Patna City, P.S. Chowk Patna City, district Patna- 800008

.....Petitioner/s

Versus

1. Satrugan Sinha, son of late Bhuneshwari Pd. Sinha, resident of House No. 102 D. Block Kadamkuan, P.O. Kadamkuan, P.S. Kankarbagh, Patna-800003.

2. Mr. Vijay Kumar, son of late Kishori Lal, son of not known, resident of Station Road, Guizarbagh, P.O. Mina Bazar (Gulzarbagh) P.S. Alamganj, Patna-800007.

3. Shekhar Suman, son of Sri Suman Sekhar Bhusan Prasad, resident of 26, Oberai Scot Garden, Shastrinagar, 1st Lane Apna Ghar, Road/West, Pin code 400053 district Mumbai-53.

4. On Mausami, son of Sri Sahjat Hasan Masumi, resident of Qrt. No. W 113, Mithapur Khagaul Road, Patna, P.O. G.P.O., P.S. Jakkanpur, Dist. Patna

5. Dr. Diwakar Tejswi, son of Sri Kiran Kishor Saran, resident of M.I.G. 161 Lohiya Nagar, P.O. Kankarbagh, P.S. Kankarbagh, Patna 800020

6. Ram Narayan Rai, son of Sri Han Charan Rai, resident of mehalla Dhirachak P.O. Anishabad, P.S. Anishabad, Patna 800002.

7. Hasan Faizi Azami, son of Sri Hasan Manjoor Hashmi, resident of Hasmi Mahal, Hashmi Gali, mohalla Khanmirza, P.S. Sultanganj/Alamganj, P.O. Mahendru, Patna 800006.

8. Anjani Kumar, son of late Tarkeshwar Prasad, resident of House No.39 Loco Colony Nagarparishad Khagaul. Circle Danapur, P.S. Khagaul, P.O. Khagaul, distt. Patna 801105.

9. Kumar Rajiv, son of Smt. Rani Tara, resident of Deshprem Abhiyan Mein . Humsafar Banei, Behind of Vikaram Hotel, Exhibition Road, P.O. Exhibition Road, P.S. Gandhi Maidan, Patna 800001.

10. Deepak Kumar Singh, son of late Chandrakhet Narayan Singh, resident of Buddha Colony, G.P.O., P.S. Budha Colony, district Patna

11. Pankaj Kumar Sharma, son of Sri Ajab Lal Sharma, resident of SaJempur, P.O. Salempur, P.S. Katrasgarh, Distt. Dhanbad (Jharkhand).

12. Promod Kr. Gupta, son of Sri Ramji Sah, resident of mohalla Bakarganj Bajaja, Muharampur Chauraha, P.O. Bankipur, P.S. Pirbahore, Patna 800004.

13. Rambhajan Singh Nishad, son of late Chamru Mahto, resident of Ramkrishna Colony, Sandalpur, P.O. Mahendru, P.S. Bahadurpur, Distt. Patna

14. Vidhan Chandra Rana, son of Sri Rajendra Nath Das, resident of Chandmari , Road, Gali No.4, Lohiya Nagar, P.O. Kankarbagh, P.S. Kankarbagh, Patna 20.

15. Sanjay Verma, son of late Bishambhar Nath Verma, resident of J.P. Nagar, Bagnali, P.O. Hazipur, P.S. Hazipur Town, district Vaishali.

16. Hemant Kumar Singh son of Sri Satyadev Prasad Singh, resident of 405, Swarup Complex, Bazar Samiti Road, P.O. Bazar Samiti, P.S. Bahadurpur, Patna- 16

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..... Respondent/s

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For the Petitioner/s: Mr. S. Azeem, Advocate

For the Respondent/s: M/s S.N.P. Sharma, Sr. Adv., Manik Vedsen, Amrendra
Kr. Singh, Subbash Chandra Bose, Advocates

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

C.A.V. JUDGMENT

V.N.Sinha, J.

Petitioner filed this election petition under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) questioning the election of respondent no. I from 30-Patna Sahib Parliamentary Constituency held on 7.5.2009 (hereinafter referred to as the impugned election) on the ground that his nomination paper for contesting the impugned election was improperly rejected and for such improper rejection of the nomination paper of the petitioner impugned election of respondent no.1 is void.

2. In the election petition petitioner asserted that he came to the office of the Returning Officer to file his nomination paper for contesting the impugned election on 17.4.2009 at 1.30 P.M. but the nomination paper was not received and he reported such fact to the State Electoral Officer, Bihar under letter no.EC/1/2009 dated 17.4.2009, Annexure-1. Petitioner again approached the Returning Officer on 18.4.2009 for filing his nomination paper, which was received and petitioner was administered oath at 11.26 A.M. Acknowledging the fact that petitioner filed his nomination paper for contesting the impugned election in two sets on 18.4.2009 at 11.25 A.M. he was granted receipt in part 6 dated 18.4.2009, Annexures-3, 3/1 asking him to appear for the scrutiny of the nomination paper on 20.4.2009 at 11 A.M. in the Chamber of the District Magistrate, Patna in Collectorate, Patna. Petitioner was also served with the check list dated 18.4.2009, Annexure-2/1 indicating that the documents required to be appended with the nomination paper has been appended with the same. He was also served with the certificate dated 18.4.2009, Annexure-2 that he was administered oath on 18.4.2009 at 11.26 A.M. Petitioner was telephonically called on 19.4.2009 in the confidential section of the office of the Returning Officer to collect urgent letter no.86 dated 19.4.2009, Annexure-4 asking him to produce all his proposers on 20.4.2009 in the office of the Returning Officer for verification of their signature. In compliance of the instruction contained in letter dated 19.4.2009, Annexure-4 petitioner came to the office of the District Magistrate/Returning Officer on 20.4.2009 along with his 9 proposers. The Returning Officer proceeded with the scrutiny of the nomination paper of the petitioner and became satisfied after examining the Voter identity Card of the proposers'as also by verifying their signature. In paragraph 8 of the petition petitioner has stated that he requested the Returning Officer in writing that he may be permitted to produce his 10th proposer Dr. Tapeswar Thakur on 21.4.2009 as on 20.4.2009 10th proposer of the petitioner was engaged in the marriage of his daughter at Jamalpur but such request was declined, whereas Returning Officer allowed another candidate Sri Hasan Faizi Azami respondent no.7 to produce his 10th proposer on 21.4.2009. Aforesaid indiscretion of the Returning Officer was reported to the Election Commission of India and Chief Electoral Officer, Bihar but they also did not take notice of the aforesaid indiscretion on the part of Returning Officer. Petitioner, however, produced his 10th proposer in the office of the Returning Officer on 21.4.2009 at 9.15 A.M. but the petitioner was neither allowed to meet the Returning Officer with his 10th proposer nor information about the said fact was given to the Returning Officer by the subordinates of the Returning Officer. It is stated in paragraph-9 of the election petition that the Returning Officer did not permit the petitioner and others to examine either his own nomination paper or the nomination paper of other candidates and thereby according

to the petitioner scrutiny was not conducted as prescribed under law. Aforesaid misdemeanour of the Returning Officer was communicated by the petitioner to the Chief Electoral Officer, Bihar and Chief Election Commissioner of India under letter no.2/EC/09 dated 20.4.2009 and letter no.3/EC/09 dated 21.4.2009, Annexures-5, 5/1 to the election petition. In paragraph-11 of the election petition it has been averred that petitioner learnt about rejection of his nomination paper on 21.4.2009 at 4.30 P.M. after the list of validly nominated candidate was pasted on the notice Board and the name of the petitioner was not included therein. Having learnt about the rejection of the nomination paper petitioner wanted to ascertain the reasons for rejection of his nomination paper by filing application but the same was not accepted by the Magistrate on duty, who neither received the representation of the petitioner on behalf of the Returning Officer nor allowed him to meet the Returning Officer and thus petitioner was deprived of the opportunity to persuade the Returning Officer not to reject his nomination paper. Petitioner thereafter submitted letter no.EC/4/09 dated 24.4.2009, Annexure-6 to the Returning Officer asking him to furnish reasons which persuaded him to reject his nomination paper, copy whereof was also sent to the Chief Electoral Officer, Bihar. In paragraph-12 of the election petition it has been averred that petitioner was not provided with certified copy of order dated 20.4.2009 by which his nomination paper was rejected, although he was entitled for being given the certified copy of order rejecting his nomination paper no sooner the same was passed. It has further been averred in the said paragraph that petitioner applied for grant of certified copy on 8.5.2009 which was not attended to until he persuaded the authorities to furnish the same, which was finally given to him on 18.5.2009 and is contained in Annexure-7 to the election petition. In paragraph 13 petitioner further stated that he communicated to the Chief Electoral Officer, Bihar and the Chief Election Commissioner, New Delhi the illegal manner in which the Returning Officer was discharging his duties with a view to impede filing of nomination paper to filter the candidates from contesting the impugned election. A compact disc of the video recording of the events, which took place on 17/18.4.2009 was also prepared and can be produced in the Court as and when necessary. In paragraph 14 petitioner averred that Electronic Voting Machine (E.V.M.) provides for only 16 names, whereas there were 33 candidates who wanted to contest the impugned election. The Returning Officer adopted tactics to reject the nomination paper of 17 candidates so as to facilitate the officers and staff working to conduct the impugned election to do with one Electronic Voting Machine which contains the name of not more than 16 candidates. In paragraph-15 petitioner asserted that Returning Officer of impugned election was also the Returning Officer for 31-Patliputra Parliamentary Constituency and in both the Constituencies 33 candidates had filed their nomination paper but the Returning Officer in both the constituencies adopted tactics to reject the nomination paper of 17 candidates so as to limit the number of contesting candidates in both the constituencies to 16 with the object of conducting the election with one Electronic Voting Machine. In paragraph- 16 of the election petition petitioner asserted that the conduct of the Returning Officer while conducting the impugned election has not been fair and impartial as he was influenced by the party and the candidate. In paragraph-17 petitioner has asserted that petitioner is senior citizen, a social activist and believes in free and fair election but the conduct of Returning Officer was not at par with the expectations of fairness vested under the law in the office of the Returning Officer. In paragraph-18, 19 petitioner asserted that he was not furnished the reasons for rejection of his nomination paper at the relevant time and thereby deprived of his statutory right to contest the impugned election. In paragraph-20 it has been asserted that petitioner is attached to the people and their ground reality, in case, nomination paper of the petitioner accepted as valid he would have won the election as there was every chance of

his victory for the services rendered by him as a Trade Union leader and also for his services amongst the downtrodden. In paragraph- 21 petitioner has asserted that his nomination paper was rejected improperly on flimsy grounds as thereunder it was held that petitioner/his proposers were not present at the time of scrutiny despite notice to the petitioner and their signature in part 2 of the nomination paper could not be verified. It was also held that part number, roll number of proposer no.7 as given in the nomination form was not in consonance with part number, roll number given in the voter list. It was further held that part 3 'Ka' was not filled up by the candidate in accordance with law. It was also found that information given in Form-26 and affidavit, Annexure- 1 are not same. In paragraph 22 it has been stated that the finding that the candidate or his proposers were not present on the date of scrutiny is not correct. Petitioner and his proposers were present on the date of scrutiny, which is evident from perusal of nomination paper showing their signature additionally in the margin of the nomination paper. In paragraph-23 it has been stated that part, roll number of proposer no.7 did not tally with the voter list is not a defect. In paragraph 24 it has been stated that part 3 'Ka' of the nomination paper has not been filled up in accordance with law is also not correct as it has been filled up properly. In paragraph-25 it has been stated that facts as stated in Form 26 and affidavit, Annexure- I have not been differently stated as facts stated in the two affidavit have been mentioned in accordance with law. In paragraph-26 of the election petition it has been averred that cause of action for filing this petition arose between 17.4.2009-21.4.2009 as petitioner had every chance to become victorious as he is associated with the pain of common man and has earned reputation as savior of the downtrodden for his involvement with their pain and sorrow. In paragraph-27 it has been stated that petitioner was prevented from contesting the impugned election on account of Janta Dal United, the ruling party in the State in association with Bhartiya Janta Party getting assistance from the Returning Officer for furtherance of election prospect of respondent no.1 by applying latent administrative pressure as petitioner once nominated for contesting the impugned election would have become victorious. In paragraph-28 petitioner has asserted that he requested for grant of copy of the nomination paper(s) which was rejected. The office of the Returning Officer assured the petitioner to supply the copy of the order rejecting the nomination paper on the day of filing of petition but the copy of the order rejecting his nomination paper was not made available to him and he had to apply for certified copy of the same under requisition dated 23.6.2009, Annexure-8. In paragraph 29 election petitioner has asserted that being aggrieved by the rejection of his nomination paper he filed C.W.J.C. No.5454 of 2009 which was dismissed under order dated 29.4.2009, Annexure-9 holding that High Court had no jurisdiction to entertain such writ petition, however, granting liberty to the petitioner to represent before the Election Commission of India where petitioner had already represented but the Commission maintained reticence and did not take affirmative steps. In paragraph 30 of the election petition petitioner has prayed for setting aside the order dated 20.4.2009 by which his nomination paper for contesting the impugned election was rejected and to declare the election as void with further direction to hold fresh election.

3. Respondent no.1 in paragraph 1, 2 of his written statement has stated that election petition is not maintainable and fit to be dismissed for non-compliance of the mandatory provisions of Sections 81, 82, 83 of the Act. In paragraph 3, 4 of the written statement it has been stated that election petitioner has failed to furnish adequate statement of material facts and full particulars constituting the allegation of corrupt practice raised in paragraph-27 of the election petition that respondent no.1 solicited and procured the help of Returning Officer for furtherance of his election prospect and thereby election petitioner miserably failed to comply the provisions of Section 83 of the Act and the

election petition is fit to be dismissed summarily under order VII Rule 11 of the Code of Civil Procedure. In paragraph-5 of the written statement assertion has been made that election petition suffers from incurable defect and infirmities as the verification and affidavit in support of the election petition is not in accordance with order VI Rule 15 of the Code of Civil Procedure. In paragraph-6 of the written statement averment has been made that the facts stated in paragraph 1,2 3 as also the contents of Annexures- 1 to 7 of the election petition are matters of record but burden to prove the same lies on the petitioner. In paragraph-7 of the written statement respondent no.1 had denied the contents of paragraph-8 of the election petition as not only incorrect but also misleading and contrary to the records, particularly the order passed by the Returning Officer rejecting nomination no.56 of the election petitioner, as according to respondent no.1 there were three substantial and vital defect in the said nomination, namely, that election petitioner did not produce his proposers before the Returning Officer to verify the genuineness of their signature over the nomination paper, serial and part number of proposer no.7 as mentioned in the nomination paper of the petitioner did not find place in the voter list, the affidavit in prescribed Form 26 and Annexure- 1 did not tally as in Form 26 election petitioner failed to mention about trial of some of the criminal cases pending against him, which were included in Annexure-1 appended with the nomination paper. According to respondent no.1 in view of the aforesaid three defects noticed in the nomination paper of the petitioner the Returning Officer had no option but to reject the nomination paper of the petitioner on the ground of substantial, material and vital defects noticed in the nomination paper of the petitioner, which is evident from perusal of the order rejecting the nomination paper of the petitioner. In paragraph-8 of the written statement respondent no.1 has stated that statement/allegations made in paragraph-9 of the election petition are afterthought raised only for the purpose of election petition, as according to respondent no.1 opportunity was provided to all the candidates to examine the nomination paper of the other candidates and the allegation to the contrary made in paragraph under reply is denied. In paragraph 9 of the written statement respondent no.1 has denied the statements made in paragraph 10 as also the contents of letter dated 20, 21.4.2009 Annexures-5, 5/1 of the election petition as according to respondent no.1 letter dated 20,21.4.2009 were manufactured much after the scrutiny of the nomination paper(s) filed for contesting the impugned election. In paragraph 10 of the written statement respondent no.1 has stated that statement made in paragraph-11 and Annexure-6 of the election petition is not fully correct as according to respondent no.1 no sooner the Returning Officer rejected the nomination paper of the election petitioner during scrutiny of the nomination paper for contesting the impugned election the election petitioner left the place of scrutiny and the Returning Officer had no opportunity to furnish the order rejecting the nomination paper of the petitioner on him. According to respondent no.1 the statements made in Annexure-6 are matters of record as the petitioner himself made it impossible for the Returning Officer to grant him the copy of the order rejecting his nomination paper as he absented from the place of scrutiny. In the circumstances, it is submitted in the said paragraph that the allegations made against the Returning Officer in paragraph-11 read with Annexure-6 are not fair, besides being motivated is far from truth. In paragraph 11 of the written statement respondent no.1 has denied the averments made in paragraph 12 of the election petition read with contents of Annexure-7 and stated that allegations made against the officials in paragraph 12 are not correct and Annexure-7 is self created document of the petitioner as he himself absented from Chamber of the Returning Officer after rejection of his nomination paper during scrutiny and it was not possible for the Returning Officer to hand over the order of rejection of the nomination paper to him. In paragraph 12, 13 of the written statement respondent no.1 has dealt with statement made in paragraph 13, 14, 15 of

the election petition and has stated that statement made in the paragraph under reply are irrelevant imaginary and false, which has nothing to do with the rejection of nomination paper of the election petitioner. In paragraph 14 of the written statement respondent no.1 has stated that allegation raised in paragraph 16 of the election petition is not only false but also emphatically denied by respondent no.1. In paragraph 15 of the written statement respondent no.1 has considered the averments made in paragraph 17 of the election petition and has stated that the statement made therein are in self praise of the petitioner and irrelevant for the purpose of this election petition. In paragraph 16 of the written statement respondent no.1 has considered the statement made in paragraph 18, 19 of the election petition and stated that the contents thereof are not correct because petitioner had full knowledge regarding the reasons for rejection of his nomination paper during scrutiny and any statement made to the contrary is false, which is emphatically denied by respondent no.1. In paragraph 17 of the written statement respondent no. 1 has considered the averments made in paragraph 20 of the election petition and stated that contents thereof are not true but wishful thinking of the petitioner. In paragraph 18 of the written statement respondent no.1 has considered the averments made in paragraph 21 of the election petition and states that contents thereof are matters of record and petitioner cannot raise any grievance against the facts stated therein. In paragraph 19 of the written statement respondent no.1 has considered the averments made in paragraph 22 of the election petition and stated that averments made therein are not correct and is being emphatically denied by respondent no.1. In paragraph 20 of the written statement respondent no.1 has considered the averments made in paragraph 23 of the election petition and has stated that the statements made therein are against the law as the wrong serial, part number of the proposer in the nomination paper is a vital defect in the nomination paper and as such any statement to the contrary made by the petitioner is emphatically denied by respondent no.1. In paragraph 21 of the written statement respondent no. 1 has considered the averments made in paragraph 24 of the election petition and has stated that the contents thereof are not correct and emphatically denied by respondent no.1. In paragraph 22 of the written statement respondent no.1 has considered the averments made in paragraph 25 of the election petition and has stated that contents thereof are not correct as the statement made in form 26 supported by an affidavit as well as statement made in affidavit, Annexure- 1 are matters of record which clearly indicate that the statement made in the two affidavit are contrary to each other and in such circumstances any statement to the contrary made by the petitioner is not correct and emphatically denied by respondent no.1. In paragraph 23 of the written statement respondent no.1 has considered the averments made in paragraph 26 of the election petition and has stated that contents thereof are hypothetical and self praise of the petitioner as no complete cause of action arose in view of the allegations made in the election petition, which is too vague without any material facts and contrary to law. In paragraph 24 of the written statement respondent no.1 has considered the averments made in paragraph 27 of the election petition that respondent no.1 procured assistance of Returning Officer for the furtherance of his success in the impugned election but petitioner has utterly failed in giving adequate statement of material facts and full particulars as is required by mandatory provision of Section 83 of the Act and as such allegations are fit to be deleted from pleadings made in the election petition and the election petition is fit to be dismissed summarily under order VII Rule 11 C.P.C. In paragraph 25 of the written statement respondent no.1 has considered the averments made in paragraph 28 of the election petition and has stated that the same is repetition of the grievance raised in paragraph 12 of the election petition and required to be ignored. In paragraph 26 of the written statement respondent no. 1 has considered the averments made in paragraph 29 of

the election petition and has stated that the contents thereof are contrary to law as there is an embargo raised by Article 329(b) of the Constitution and as such steps taken by the petitioner for filing writ petition assailing the order rejecting his nomination paper was contrary to law and the Constitution of India and in such circumstances, the High Court rightly rejected the writ petition of the petitioner, which is evident from Annexure-9 to the election petition, the order passed by the High Court in the writ petition. In paragraph 27 of the written statement respondent no. 1 stated that relief prayed for in paragraph 30 of the election petition are contrary to law and petitioner is not entitled to any relief from the High Court in the election petition. In paragraph 28 of the written statement respondent no. 1 stated that there is no statement in the election petition that petitioner has deposited a sum of Rs.2,000/- as security money required under Section 117 of the Act. In paragraph 29 of the written statement respondent no.1 has stated that the statement which have not been specially denied in this written statement be deemed to have been denied.

Besides respondent no.1, respondent nos.2, 5 also filed their written statement but as they did not examine any Witness in support of the pleading made in their written statement, the details of their written statements are not being incorporated in this order.

4. In the light of the pleadings made by the parties this Court under order dated 21.05.2010 framed following issues :-

- a. Whether or not provision of Sections 81, 82 and 83 of the R.P. Act, 1951 has been complied with?
- b. Whether or not the election petition contains complete cause of action adequate to set the case for trial?
- c. Whether or not election petition contains adequate statement of material facts with respect to corrupt practice of the Returning Officer?
- d. Whether or not the attempt to nip in the bud the zeal of the petitioner by way of rejecting this nomination?
- e. Whether or not the election petition suffers from any of the incurable defects and infirmities as raised in paragraph-5 of the written statement?
- f. Whether or not the Returning Officer can issue notice U/s 36(2)(c) calling for the nominee to produce his proposers for verification of the genuineness of their signature?
- g. Whether or not the name of electoral roll number of proposer no.7 is the same as entered in the electoral roll?
- h. Whether or not under the requirement of law prescribed form 26 and Annexure-1 of the nomination should tally?
- i. Whether or not the Returning Officer has acted in arbitrary manner while conducting election process?
- j. Whether or not contents of annexure and solemn affirmation is an after-thought which is a communication to authorities following autocratic action of the Returning Officer?
- k. Whether or not rejection of nomination of the petitioner is valid and proper?
- l. Whether or not in case of rejection of nomination paper not in accordance with law the election of respondent no.1 from 30- Patna Sahib should be held void?

6. In the light of the issues framed election petitioner examined six witnesses.

(a) P.W. 1 is Sri Mahesh Prasad Singh who was also a candidate for contesting the impugned election and filed Election Petition No.6 of 2009 which was dismissed by this Court under judgment dated 5.9.2012. He stated in paragraph 3, 4 of his examination in

chief that he and the petitioner arrived together on 17.4.2009 at 1.30 P.M. by chance for filing the nomination paper in the office of the Returning Officer and waited till 3 P.M. but could not submit nomination paper as both were not allowed to enter the Chamber of Returning Officer. In paragraph 5 of the examination in chief witness stated that he learnt that Sri Shekhar Suman took about one hour and 30 minutes to fill/submit his nomination paper and by the time he came out of the Chamber of the Returning Officer it was 3 P.M. and the witness and the election petitioner was asked to come on the next day for filing the nomination paper. In paragraph-6 of the examination in chief witness has stated that petitioner arrived for filing his nomination paper on 18.4.2009 at 10 A.M. but filed his nomination paper at about 11.30 A.M. In paragraph-7 of the examination in chief witness has stated that scrutiny was held on 20.4.2009 but the order was made available to the petitioner on 18.5.2009. In paragraph-8 of the examination in chief witness has stated that he has come to know about rejection of the nomination paper no.56 of the petitioner on various grounds. In paragraph-2 of the cross examination witness has stated that he has also filed election petition in which he has already deposed. In paragraph-3 of the cross examination witness has stated that in his earlier deposition he has already stated that he was employees of the Bihar State Food and Civil Supplies Corporation wherefrom he was dismissed. In paragraph-4 of the cross examination witness has stated that he has challenged the dismissal order by filing writ petition in the High Court. In paragraph- 5 of the cross examination witness has stated that before filing writ petition he challenged the dismissal order before the Chairman cum Managing Director, Bihar State Food and Civil Supplies Corporation which was also rejected and order rejecting the appeal was challenged by filing the writ petition. In paragraph-6 of the cross examination witness has stated that F.I.R. No.61 of 2002 for the offence under Section 406 I.P.C. was also registered against him on 4.5.2002, which is stated in paragraph-5 of the appellate order dated 20.5.2004. In paragraph-7 of the cross examination witness has admitted that he was not present at the time of scrutiny of nomination paper of election petitioner. In paragraph-8 of the cross examination witness has stated that he is not aware about the grounds on which nomination paper of the election petitioner was rejected.

(b) P.W. 2 is Mukesh Jamuar, son of the election petitioner. He has stated in paragraph 1 of his examination in chief that he was one of the proposer of election petitioner in the nomination paper, which was filed for contesting the impugned election and that he along with election petitioner arrived in the office of the Returning Officer on 17.4.2009 at 1.30 P.M. and reported their arrival to the Magistrate on duty. In paragraph-2 of the examination in chief witness has stated that after arrival petitioner and the proposers were asked to wait as the witness was informed that some other candidate is submitting his nomination paper in the Chamber of Returning Officer. In paragraph-3 of the examination in chief witness has stated that he and the election petitioner was not allowed to enter the Chamber of the Returning Officer and were asked by the Magistrate on duty to come on the next day. In paragraph-4 of the examination in chief witness has stated that a complaint letter, Annexure- 1 to the election petition was communicated to the Chief Electoral Officer, Bihar about the deliberate wastage of time of the election petitioner. In paragraph-5 of the examination in chief witness has stated that he along with election petitioner and all 10 proposers arrived in the office of the Returning Officer on 18.4.2009 at 10.30. A.M., two sets of nomination paper was submitted and all the proposers were examined with reference to their voter identity card and their signature was also verified, whereafter the petitioner was allowed to take oath and receipt, certificates issued to him. In paragraph-6 of the examination in chief witness has stated that proceedings to scrutinize the nomination paper was taken up on 20.4.2009, he and

others were allowed to enter the chamber of Returning Officer where his signature and the signature of other proposers was verified with reference to voter identity card and the proposers were asked to put their signature on the margin of Form-2 of the nomination paper. In paragraph 7 of the examination in chief witness stated that during the scrutiny no defect in the nomination paper of the petitioner was pointed out. The nomination paper of the petitioner, however, was improperly rejected. In paragraph-8 of the examination in chief witness has stated that the copy of order rejecting the nomination paper of the petitioner was not made available to the petitioner until 6 P.M. on 21.4.2009 as the same was issued on 18.5.2009. In paragraph-1 of the cross examination witness has stated that he was one of the proposers in the nomination paper of the election petitioner who is his father. In paragraph-2 of the cross examination witness has stated that including him there were 10 proposers. In paragraph-11 of the cross examination witness has stated that he does not remember the serial, part number of all the 10 proposers. In paragraph-4 of the cross examination witness has stated that he does not even remember his serial, part number as he has voter identity card. In paragraph-5 of the cross examination witness has stated that he is not aware about the serial, part number of his father. In paragraph-6 of the cross examination witness has stated that he is also not aware about the serial number of nomination paper of his father. In paragraph-7 of the cross examination witness has stated that his father has filed nomination paper in two sets. In paragraph-8 of the cross examination witness has stated that proposers in both the sets of nomination paper were common. In paragraph-9 of the cross examination witness has stated that he does remember the name of all the 10 proposers of his father. In paragraph-10 of the cross examination witness has stated that on the date of scrutiny he was also present. In paragraph-11 of the cross examination witness has stated that he was allowed to enter the Chamber of Returning Officer along with his father when he entered the Chamber of Returning Officer for the purpose of scrutiny of his nomination paper. In paragraph-12 of the cross examination witness has stated that during the scrutiny of nomination paper his father also put his signature on the register. In paragraph-13 of the cross examination witness has stated that all the 10 proposers have entered the Chamber of Returning Officer at the time of scrutiny. In paragraph-14 of the cross examination witness has stated that all the 10 proposers have put their signature over the attendance register. In paragraph-15 of the cross examination witness has stated that he does not recollect the exact time at which the scrutiny of the nomination paper of his father was taken up and concluded. In paragraph-16 of the cross examination witness has stated that after scrutiny of the nomination paper of his father reason for rejection of the nomination paper was not informed. In paragraph-17 of the cross examination witness has stated that later on he came to learn that nomination paper of his father was rejected on the ground that signature of one of the proposers was not verified. In paragraph-17 of the cross examination witness stated that the proposer whose signature is said to have not been verified at the time of scrutiny was also present at the time of scrutiny. In paragraph-19 of the cross examination witness has stated that he is not aware whether signature of proposer taken at the time of scrutiny for verification matched with his earlier signature on the nomination paper. In paragraph-20 of the cross examination witness has stated that signature of all the proposer was verified at the time of scrutiny. In paragraph-21 of the cross examination witness has stated that he does not remember the name of proposer whose signature did not match with his earlier signature on the nomination paper. In paragraph 22 the witness refuted the suggestion that he was deposing in the election case only with a view to help his father.

(c) P.W. 3 is Sanjay Verma who was also a candidate for the impugned election. In paragraph-2 of the examination in chief witness has stated that he filed his nomination on

17.4.2009. In paragraph-3, 4 of the examination in chief witness has stated that scrutiny was conducted on 20.4.2009 in the official Chamber of District Magistrate, Patna cum Returning Officer of the impugned election. In paragraph-5 of the examination in chief witness has stated that he was not allowed to look into the nomination paper of other candidates, although he desired to look into the nomination paper of others. In paragraph-6 of the examination in chief witness has stated that scrutiny was conducted individually. In paragraph-7 of the examination in chief witness has stated that Returning Officer did not properly conduct the scrutiny proceeding and acted as a dictator while conducting scrutiny proceeding. In paragraph-8 of the examination in chief witness has stated that occasion for filing election petition occurred as candidates were not allowed to look into the nomination paper of other candidates. In paragraph-9 of the examination in chief witness has stated that election petitioner was not handed over the order rejecting the nomination paper on 20.4.2009 or 21.4.2009. In paragraph-1 of the cross examination witness has stated that he was also a contesting candidate in the impugned election. In paragraph-2 of the cross examination witness has stated that he indicated his age in the nomination paper as 48 or 49 years. In paragraph-3 of the cross examination witness has stated that he had gone to the office of the Returning Officer on 20.4.2009 along with his 10 proposers for verification of their signature. In paragraph-4 of the cross examination witness has stated that he does not remember the serial number of his nomination paper. In paragraph-5 of the cross examination witness has stated that he had not filed any petition stating that opportunity to examine the nomination paper of other candidates was not given to him and to the other candidates. In paragraph-6 of the cross examination witness has stated that he does not remember whether his nomination paper was subjected to scrutiny prior to or after the scrutiny of nomination paper of the election petitioner. In the same paragraph the witness volunteered that candidates were called serially for scrutiny of their nomination paper. In paragraph-7 of the cross examination witness has stated that he does not even remember the name of candidate whose nomination paper was scrutinized prior to his nomination paper. In paragraph-8 of the cross examination witness has stated that he does not even recollect the name of the candidate whose nomination paper was scrutinized after his nomination paper. In paragraph-9 of the cross examination witness has stated that he does not even remember the serial number of the nomination paper of the election petitioner. In paragraph-10 of the cross examination witness has stated that his nomination paper was subjected to scrutiny in between 12.00-12.15 P.M. but he does not remember the time of scrutiny of nomination paper of the election petitioner. In paragraph-11 of the cross examination witness has stated that he was not amongst the proposer of the election petitioner. In paragraph-12 of the scrutiny of nomination paper was completed on 21.4.2009 but the notice indicating the names of validly nominated candidate was not affixed on the notice board on that date. In paragraph-7 of the examination in chief witness has stated that as complained by the election petitioner order rejecting his nomination paper was not made available to him. In paragraph-i of the cross examination witness has stated that he is accredited representative of News + Television Channel. In paragraph-2 of the cross examination witness has stated that he had gone to the office of the Returning Officer of the impugned election to cover the News concerning filing of the nomination paper by the candidates. In paragraph-3 of the cross examination witness has stated that statement made in paragraph-2 of his examination in chief is correct, other representatives of News + T.V. Channel were also present in the office of the Returning Officer from before on 17.4.2009 and he also came there. In paragraph-4 of the cross examination witness has asserted about the demonstration and protest organised and stated in paragraphs 3, 4 of his examination in chief, which was

also reported in the electronic and print media. In paragraph-5 of the cross examination witness has stated that he does not remember the date on which the News about the protest and demonstration referred to in paragraph 3 and 4 of his examination in chief was telecast in the electronic media and printed in the newspaper. In paragraph-6 of the cross examination witness has stated that he was not amongst the proposers of election petitioner. In paragraph-7 of the cross examination witness has stated that he was outside the Chamber of the Returning Officer when election petitioner came out from the Chamber of the Returning Officer after scrutiny of his nomination paper. In paragraph-8 of the cross examination witness has stated that he stood by his statement made in paragraph 6 of his examination in chief that list of validly nominated candidates was not affixed on the notice board on 21.4.2009. In paragraph-9 of the cross examination witness has stated that he has good relation with every one in the society including the election petitioner. In paragraph- 10 of the cross examination witness has stated that it is not a fact that he has come to depose falsely because he has good relation with election petitioner.

(e) P.W, 5 is the election petitioner. In paragraph-1 of the examination in chief witness has stated that he was a candidate for the impugned election. In paragraph-2 of the examination in chief witness has stated that he filed nomination as an independent candidate. In paragraph-3 of the examination in chief witness has stated that on 17.4.2009 he reported his arrival to the Magistrate on duty at 1.30 P.M. but was made to wait till 3 P.M. yet not allowed to file his nomination paper. In paragraph-4 of the examination in chief witness has stated that he filed two sets of nomination paper on 18.4.2009 which were numbered as 56, 57. In paragraph-5 of the examination in chief witness has stated that he had gone to the office of the Returning Officer on 18.4.2009 with all his 10 proposers for filing nomination paper. In paragraph-6 of the examination in chief witness has stated that Returning Officer did not raise any doubt concerning the signature of the proposers on the nomination paper and allowed the same to be filed in two sets. In paragraph-7 of the examination in chief election petitioner has stated that all his 10 proposers were examined individually on the date of filing of his nomination papers. In paragraph-8 of the examination in chief election petitioner has stated that less than 24 hours notice was given to him to come along with all the proposers for scrutiny of the nomination paper on the date of scrutiny i.e. 20.4.2009. In paragraph-9 of the examination in chief election petitioner has stated that he was present along with 9 of his proposers on 20.4.2009. One of the proposers could not come because of the circumstances beyond his control. In paragraph- 10 of the examination in chief election petitioner has stated that he requested the Returning Officer to grant him indulgence to produce his 10th proposer on 21.4.2009, which was not allowed. In paragraph-11 of the examination in chief election petitioner has stated that the Returning Officer wanted to conduct the impugned election with one Electronic Voting Machine, which is able to include for 16 candidates. In paragraph-12 of the examination in chief election petitioner has stated that after notice containing the names of validly nominated candidates to contest the election was affixed the order rejecting the nomination paper was not made available to him. In paragraph-13 of the examination in chief election petitioner has stated that all concerned were communicated about the illegality, irregularity committed by the Returning Officer. In paragraph-14 of the examination in chief election petitioner has stated that he was compelled to invoke the writ jurisdiction of the Hon'ble Court for violation of his statutory right to contest the election. In paragraph-1 of the cross examination election petitioner has stated that at the time of filing of nomination paper for the impugned election his age was 58 years, which was mentioned in the nomination paper. In paragraph-2 of the cross examination election petitioner has stated that earlier he had not contested any election. In paragraph-3 of the cross examination election petitioner has stated that he is associated with Trade Union i.e. C.F.T.U.I. In paragraph-4 of the cross examination election petitioner has stated that besides being associated with the aforesaid Trade Union he is not

engaged in any other work and he also does not own any ration shop. In paragraph-5 of the cross examination election petitioner has stated that he has seen the report dated 20.4.2009 of Sri Bijendra Jha submitted in connection with verification of the signature of his proposers. In paragraph-6 of the cross examination election petitioner has stated that on the date of nomination i.e. 18.4.2009 the voter identity card and the signature of all the 10 proposers was verified and at the time of verification all the 10 proposers were present but on the date of scrutiny one of the 10 proposers was absent. In paragraph-7 of the cross examination election petitioner has stated that on 19.4.2009 he was informed by the office of the Returning Officer on his cell phone to come and collect important instruction, accordingly, he approached the office of the Returning Officer where he was handed over letter dated 19.4.2009, which is also annexed as Annexure-4 to his election petition. In paragraph-8 of the cross examination election petitioner has stated that under letter dated 19.4.2009 he was directed by the Returning Officer to produce his 10 proposers for verification of their signature on the date of scrutiny i.e. 20.4.2009. In paragraph-9 of the cross examination election petitioner has stated that on 20.4.2009 the date of scrutiny his proposer Tapeshwar Thakur has not gone for verification of his signature. In paragraph- 10 of the cross examination election petitioner has stated that he is not a handwriting expert to comment on the finding of the Assistant Returning Officer that the signature of Sri Manish Kumar Sinha on his nomination paper is different from the signature of Sri Manish Kumar Sinha which he put on the nomination paper at the time of verification but Sri Manish Kumar Sinha was present on the date of verificational scrutiny. In paragraph-11 of the cross examination election petitioner has stated that it is incorrect to suggest that Sri Manish Kumar Sinha did not put his signature on his nomination paper at the time of verification of his signature and that he was not present at the time of verification and that some other person was present who put his signature. In paragraph- 12 of the cross examination election petitioner has stated that as he has not been asked about the grounds of rejection of his nomination paper he has not stated such fact in his cross examination. In paragraph- 13 of the cross examination election petitioner has stated that under order dated 20.4.2009 passed by the Returning Officer reasons for rejecting his nomination paper has been indicated. In paragraph- 14 of the cross examination election petitioner has stated that one of the grounds for rejecting his nomination paper under order dated 20.4.2009 is that part number and serial number of his 7th proposer Md. Safikur Rahman did not tally with part no. 190-104, serial no.5211 of the voter list of Patna Sahib Assembly Constituency, which is incorrect as the same was verified at the time of filing of nomination paper from the new voter list. In paragraph-15 of the cross examination election petitioner has stated that in paragraph 23 of his election petition he has stated on oath that part number and serial number of proposer no.7 as indicated in the nomination paper did not tally with the voter list, which is not a defect. In paragraph- 16 of the cross examination election petitioner has stated that in Annexure- 1 appended with Form 26 he has given required details regarding the three criminal cases pending against him by indicating the number of those cases as also the court in which the cases are pending and the date on which cognizance has been taken together with the stage of the trial in the three pending cases. In paragraph-17 of the cross examination election petitioner has stated that while giving the details of his liabilities on affidavit appended with Form 26 he has indicated the amount due from him but not the complete address of the Branch of the Bank in which the amount is due. In paragraph- 18 of the cross examination election petitioner has refuted the suggestion that he being the election petitioner has deposed falsely before this Court.

(f) P.W. 6 is Md. Shafiqur Rahman proposer no.7 of the election petitioner. In paragraph-2, 3 of the examination in chief witness has stated that he is a voter from 184

Patna Sahib Assembly Constituency and his name is found mentioned in part no. 178, serial no. 173. In paragraph-4, 5 of the examination in chief witness has stated that election petitioner filed nomination paper on 18.4.2009 in his presence. In paragraph-6 of the examination in chief witness has stated that he was also present during scrutiny of the nomination paper of the election petitioner on 20.4.2009. In paragraph-7 of the examination in chief witness has stated that he put his signature on the nomination paper before the Returning Officer on 20.4.2009. In paragraph-8 of the examination in chief witness has stated that he returned back home in the evening after 3 P.M. In paragraph-9 of the examination in chief witness has stated that he was also a voter for the impugned election. In paragraph-1 of the cross examination witness has stated that having seen part 2 of the nomination paper filed by the election petitioner he identified his name at serial no.7 and states that therein he has mentioned constituency no. 190, part no. 104 and serial no.5211. In paragraph-2 of the cross examination witness volunteers that the entries made in part 2 of the nomination paper of the election petitioner against his name is on the basis of the voter slip, which was given to him for the last Assembly Election held in the month of November, 2005. In paragraph-3 of the cross examination witness has further stated that statement made in paragraph 3 of his examination in chief that his name is at serial no. 173 and part no. 178 has not been stated in the election petition.

7. Respondent no. 1 has examined two officials as witness on his behalf. Sri Jitendra Kumar Sinha, District Magistrate, Patna cum Returning Officer is R.W.-1. Sri Bijendra Jha Additional District Magistrate(General), Patna is R.W. 2.

(a) R.W. 1 stated in paragraph-1 of his examination in chief that he was the Returning Officer for conducting the impugned election. In paragraph-2 of the examination in chief R.W. 1 has stated that the last date for filing of nomination paper was 18.4.2009 and the date of scrutiny of nomination paper was scheduled for 20.4.2009. In paragraph-3 of the examination in chief R.W. 1 has stated that it was considered necessary to verify genuineness of proposers of independent candidates who have filed their nomination paper and as per instruction Sri Anil Kumar, Deputy Election Officer and also Incharge of Confidential Section had called independent candidates on 19.4.2009 and directed them to come with their 10 proposers on the date of scrutiny for verification of their signature so as to establish genuineness of signature of the proposers. In paragraph-4 of the examination in chief R.W. 1 has stated that part number and serial number of one of the proposer in the nomination paper filed by the election petitioner at serial no.7 did not tally with the voter list. In paragraph-5 of the examination in chief R.W. 1 has stated that officers were deputed on the day of scrutiny of nomination paper for verification of the signature of the proposers so as to ascertain their genuineness. In paragraph-6 of the examination in chief R.W. 1 has stated that election petitioner in spite of direction to bring 10 proposers for verification of their signature brought only 9 proposers for verification of signature on the date of scrutiny of nomination papers. Out of 9 proposers brought by the election petitioner on the date of scrutiny for verification of their signature, signature of proposer at serial no. 10 Sri Manish Kumar Sinha did not match with his earlier signature put on the nomination form. In paragraph-7 of the examination in chief R.W. 1 has stated that the nomination of the election petitioner was rejected as part number and serial number of his proposer no.7 Md. Shafikur Rahman did not tally with the voter list. In paragraph-8 of the examination in chief R.W. 1 has stated that on the date of scrutiny i.e. 20.4.2009 as directed election petitioner was required to come with his 10 proposers for verification of their signature but election petitioner came with only 9 proposers for verification of their signature and signature of one of the proposer at serial no.5 Sri Tapeshwar Thakur could not be verified as he was not present. Further out of the 9 proposer brought by the election petitioner on the date of

scrutiny of nomination paper signature of proposer at serial no. 10 Sri Manish Kumar Sinha did not match with his earlier signature put on the nomination form. In paragraph-9 of the examination in chief R.W. 1 has stated that candidates were given full opportunity and liberty to examine nomination paper of other candidates and scrutiny of nomination papers was performed in the presence of Central Election Observer deputed by Election Commission of India as well as candidates who had filed nomination paper and were present on the date of scrutiny. In paragraph- 10 of the examination in chief R.W. 1 has stated that he prepared and maintained separate ordersheet for the scrutiny of the nomination paper of each candidate and accordingly, he prepared separate ordersheet regarding scrutiny of the nomination paper of the election petitioner. The said ordersheet contains the ground for rejection of nomination paper of the election petitioner. In paragraph-1 of the cross examination R.W. 1 has stated that nomination paper for contesting impugned election could be filed between 11.4.2009- 18.4.2009. In paragraph-2 of the cross examination R.W. 1 has stated that date for scrutiny was fixed for 20.4.2009. In paragraph-3 of the cross examination R.W. 1 has stated that for contesting the impugned election 33 candidates filed nomination paper. In paragraph-4 of the cross examination R.W. 1 has stated that he was Returning Officer for the impugned election but not for 31 Patliputra Parliamentary Constituency. In paragraph-5 of the cross examination R.W. 1 has stated that 16 candidates were allowed to contest the impugned election. In paragraph-6 of the cross examination R.W. 1 has stated that Electronic Voting Machine can contain the name of 16 candidates. In paragraph-7 of the cross examination R.W. 1 has stated that he does not remember the exact number of parts of the nomination paper, perhaps it is 3 or 4. In paragraph-8 of the cross examination R.W. 1 has stated that he cannot say as to how much time it was actually taken to receive the nomination paper as he had authorised Assistant Returning Officer to receive the nomination papers as per law. In paragraph-9 of the cross examination R.W. 1 has stated that number of nomination paper filed on 17.4.2009 must be available on the records. In paragraph- 10 of the cross examination R.W. 1 has stated that he is not aware as to how many nomination papers were received by the Assistant Returning Officer during the period between 1.30 P.M. to 3 P.M. on 17.4.2009. In paragraph-11 of the cross examination R.W. 1 has stated that he did not receive any nomination paper on 18.4.2009. In paragraph-12 of the cross examination R.W. 1 has stated that during the 2009 Parliamentary Election, Election Commission permitted entry of five persons with the candidate of recognized political party, independent candidates, however, were at liberty to go with all the proposers. In paragraph- 13 of the cross examination R.W. 1 has stated that at the time of receipt of the nomination paper preliminary scrutiny as regards the documents appended with the nomination paper was conducted by the Assistant Returning Officer. In paragraph- 14 of the cross examination R.W. 1 has stated that scrutiny of nomination paper filed for contesting the impugned election was conducted in the office of the Returning Officer i.e. office of the District Magistrate, Patna. In paragraph-15 of the cross examination R.W. 1 has stated that at the time of scrutiny of the nomination paper all the observers appointed by the Election Commission of India were present. In paragraph-16 of the cross examination R.W. 1 clarified that Election Commission had appointed three observers. In paragraph-17 of the cross examination R.W. 1 stated that he has made statement in paragraph 16 of the cross examination on the basis of his recollection that there were three observers, one was a lady Mrs. Usha, another Mr. Upadhyay and the 3rd was Mr. Kaul, whose names must be in the record. In paragraph- 18 of the cross examination R.W. 1 has stated that during the scrutiny the candidates were asked to wait in the hail with liberty to enter the Chamber of the Returning Officer as and when they desired. The candidate whose nomination paper was under scrutiny was asked to be

present along with his proposers. The observers appointed by the election Commission remained present during the scrutiny of every nomination paper. In paragraph-19 of the cross examination R.W. 1 has stated that he does not remember the name of those candidates who objected during the scrutiny of the nomination paper of other candidates). In paragraph-20 of the cross examination R.W. 1 has stated that during the scrutiny of the nomination paper the candidates were allowed to come with their assistants whose number was not restricted. In paragraph-21 of the cross examination R.W. 1 has stated that it is not correct to suggest that he did not allow even the candidates to look into their own nomination paper at the time of scrutiny. Such suggestion is incorrect as observers were there to check his action. He farther stated that even without the presence of the observers, he would have allowed the candidate to remain present at the time of scrutiny and to see his nomination paper. In paragraph-22 of the cross examination R.W. 1 has stated that he does not remember whether on 20.4.2009 he had taken lunch. In paragraph-23 of the cross examination R.W. 1 has stated that he did not remember the exact time when he took lunch during the period between 11.4.2009- 21.4.2009. In paragraph-24 of the cross examination R.W. 1 has stated that signature of the proposers of the independent candidate was verified during scrutiny. In paragraph-25 of the cross examination R.W. 1 has stated that signature of the proposers who were present at the time of presentation of the nomination paper by the candidate their signature was verified at the time of presentation but those proposers who were not available at the time of presentation of nomination paper for verification of their signature another opportunity was given by giving separate notice to all the candidates including those candidate signature of whose proposers stood already verified. In paragraph-26 of the cross examination R.W- 1 has stated that it is incorrect to suggest that he did not allow the election petitioner to bring his 10th proposer on 21.4.2009 for verification of his signature. The witness further volunteers that any candidate who asked for time was granted time until 21.4.2009. In paragraph-27 of the cross examination R.W. 1 has stated that he issued notice to all the independent candidates to make available their proposers so as to verify the genuineness of the proposers and their signature put over the nomination form, such notice was issued after informal consultation with the observers appointed by the Election Commission of India as they were receiving complaints that there are many nomination papers with fake proposers. In paragraph-28 of the cross examination R.W. 1 has stated that no sooner the order rejecting the nomination paper of the election petitioner was passed the same was directed to be given to the election petitioner but if he did not receive the order soon after scrutiny, no such complaint was made by him as he was not aware of any such complaint. In paragraph-29 of the cross examination R.W. 1 has stated that Assistant Returning Officer received the nomination paper from the election petitioner and verified or not the entries made in connection with the proposer at serial no.7 of the nomination paper can only be confirmed by Assistant Returning Officer. In the same paragraph the witness further volunteers that at the time of scrutiny of nominating paper having seen the entries made against proposer no.7 he pointed out to the election petitioner that Constituency No. 190 is not within Patna Sahib Parliamentary Constituency but the election petitioner did not accept the suggestion and maintained that the entries made in the nomination paper against proposer No.7 is correct as he was more concerned about his 5th proposer Tapeswar Thakur who was not available for verification of his signature. In paragraph-30 of the cross examination R.W. 1 has stated that voter list which has been shown to him is not the voter list of part number which is mentioned in the nomination paper of the election petitioner against proposer no.7. In paragraph-31 of the cross examination R.W. 1 has stated that it is incorrect to suggest that statement made by him during the cross examination is false and that he has made false statement only to support

respondent no.1. The witness further volunteers that while conducting the impugned election his conscience was very clear as ample and adequate opportunity was provided to all the candidates who filed nomination paper(s) for contesting the impugned election.

(b) R.W. 2 Bijendra Jha stated in paragraph-1 of his examination in chief mat during the impugned election he was posted at Patna as Additional District Magistrate(General), Patna. In paragraph-2 of the examination in chief R.W. 2 has stated that during the impugned election he was also assigned the work of verification of signature of proposers) who had put their signature on nomination papers as proposers filed by the independent candidates for contesting the impugned election. In paragraph-3 of the examination in chief R.W. 2 has stated that as per instruction issued a number of independent candidates came on 20.4.2009 along with their proposers for required verification and they were required to sign adjacent to their respective signature on the nomination paper filed by the candidates. In paragraph-4 of the examination in chief R.W. 2 has stated that election petitioner came with only 9 proposers for verification of signature of the proposers. In paragraph-5 of the examination in chief R.W. 2 has stated that out of 9 proposers brought by the election petitioner for verification of signature, signature of Sri Manish Kumar Sinha prima facie did not match with the signature put by Sri Sinha on the nomination form of the petitioner. In paragraph-6 of the examination in chief R.W. 2 has stated that during the 2009 Lok Sabha Election he was entrusted with the verification of signature of the proposers of the independent candidates for ascertaining that the signature of the proposers on the nomination paper is by a genuine elector. In paragraph-1 of the cross examination R.W. 2 has stated that earlier he was posted in Patna Collectorate for about three years. In paragraph-2 of the cross examination R.W. 2 has stated that Handbook of the Returning Officer issued by the Election Commission of India is meant for the Returning Officer and as he was not the Returning Officer in the 2009 Parliamentary Election, he had no occasion to go through the Handbook but he is aware about few of the instructions contained in the Handbook. In paragraph-3 of the cross examination R.W. 2 has stated that he does not remember the exact number of Assistant Returning Officers appointed for conducting the impugned election. One of the Assistant Returning Officer was D.C.L.R., Patna Sadar. In paragraph-4 of the cross examination R.W. 2 has stated that he is not aware as to which of the Assistant Returning Officer was authorised to receive the nomination paper from the candidates who wanted to contest the impugned election. In paragraph-5 of the cross examination R.W. 2 has stated that verification means to verify the things for which an. officer is deputed or authorised. In paragraph-6 of the cross examination R.W. 2 has stated that in the nomination form there is no separate column for verification of the signature of the proposers. In paragraph-7 of the cross examination R.W. 2 stated that he had to verify the signature of proposers and-not to verify the proposers appearing before him that they signed the nomination paper as proposer before filing of the nomination paper. In the same paragraph witness further states that person who appeared as Sri Manish Kumar Sinha, one of the proposers of the election petitioner and signed the nomination paper for the purpose of verification of his earlier signature, his signature did not match with the earlier signature. In paragraph-8 of the cross examination R.W. 2 has stated that verification of signature of the proposers was not made during the scrutiny or at the time of filing of the nomination paper but a separate-time was fixed for verification of the signature of the proposers. In paragraph-9 of the cross examination R.W. 2 has stated that as per his recollection, the date fixed for verification of the signature of the proposers was 20.4.2009 at about 11 A.M. In paragraph- 10 of the cross examination R.W. 2 has stated that no time limit was fixed for verification of signature of the proposers. In paragraph-11 of the cross examination R.W. 2 has stated that after 20.4.2009 no further opportunity was given to the election petitioner

to bring his one of the proposers who was not available for verification of his signature on 20.4.2009. In paragraph-12 of the cross examination R.W. 2 has stated that he is not aware that another candidate Hasan Faizi Azami contesting the impugned election was given opportunity to bring one of his proposers on 21.4.2009 for verification of his signature. In paragraph- 13 of the cross examination R.W. 2 has stated that at the time of filing of the nomination paper he was not asked to verify the signature of the proposers. In paragraph-14 of the cross examination R.W. 2 has stated that it is incorrect to suggest that he has deposed by making false statement only with a view to support the returned candidate.

8. Learned counsel for the petitioner with reference to the pleadings made in the election petition as also the evidence led on behalf of the election petitioner submitted that the Returning Officer allowed the election petitioner and other independent candidates only 18 hours notice for production of the 10 proposers for verification of their signature which is bad in law in the light of proviso to Sub- section (5) of Section 36 of the Act.

9. Learned counsel for the petitioner also submitted that by not permitting the election petitioner to produce his proposer Tapeswar Thakur on 21.4.2009 for verification of his signature the Returning Officer discriminated against him as other independent candidate Mr. Hasan Faizi Azami was allowed time until 9.15 A.M. on 21.4.2009 for production of his proposer who was not available for verification of his signature on 20.4.2009, which is demonstrative of the bias of the Returning Officer against the petitioner with the sole motive to help the returned candidate.

10. Learned counsel for the petitioner next submitted that R.W.-2 Sri Bijendra Jha was directed by the Returning Officer, R.W. 1 to verify the signature of the proposers of the independent candidates but in compliance of such direction R.W. -2 obtained signature of the 9 proposers of the petitioner in the margin of the photostat copy of part-2 of the nomination form of the independent candidate(s) including the petitioner for both the sets of the nomination paper of the petitioner numbered as 56 and 57 which was perused by this Court and the act of obtaining signature for verification over photo copy of part-2 of the nomination form is illegal and against the law as well as instruction issued by the Election Commission of India in handbook for Returning Officer for 2009 General Election. In terms of the instructions of the Election Commission of India signature in verification is required to be taken in the margin of the original part-2 where seven columns have been provided but with ill motive and to filter the candidates signature in verification was obtained from the proposers on the instructions of the Returning Officer by R.W. 2 on the photostat copy of part-2 of the nomination paper of each candidate, which is illegal. In this connection, it is further submitted that signature of Sri Manish Kumar Sinha proposer no. 10 of the petitioner could not be verified by R.W.- 2 is totally false, incorrect and manipulation to defeat the statutory right of the election petitioner to contest the election.

11. Learned counsel for the petitioner further submitted that on the date of scrutiny the Returning Officer did not permit the petitioner and other candidates to examine either his own nomination paper or nomination paper of other candidates violating the provision of law enshrined under Sub-Section-(5) of Section 36 of the Act and thereby achieved the goal to help the sole respondent.

12. Learned counsel for the petitioner also submitted that Returning Officer was so biased and motivated against the petitioner that even after publication of list of validly nominated candidate for contesting the impugned election on the notice board on 21.4.2009 at 4.30 P.M. petitioner was not given the copy of the order rejecting his nomination paper as is mandatory under Sub- Section-(6) of Section 36 of the Act. Copy of the order rejecting the nomination paper of the petitioner was not given to the petitioner

even after submission of the representation dated 24.4.2009, Annexure-6 and petitioner had to apply for grant of certified copy on 8.5.2009. It is submitted that modus operandi of the Returning Officer was to filter the candidate keeping in mind success of respondent no.1 in the impugned election for which R.W.-1 a caste man of Hon'ble the Chief Minister belonging to Harnaut in the district of Nalanda and I.A.S. Officer of Tripura cadre was brought to Bihar and appointed Collector, Patna and then appointed as Returning Officer by the Election Commission to conduct the impugned election and having achieved the success of respondent no.1 in the election R.W. 1 was awarded with posting in the secretariat of the Hon'ble the Chief Minister, Bihar.

13. Learned counsel for the petitioner further submitted that nexus and ill motive of Returning Officer to illegally help respondent no.1 is also evident from the pleadings made in the election petition and deposition supporting the same that the Returning Officer of the impugned election as also for 31 -Patliputra Parliamentary Constituency allowed only 16 out of the 33 candidates who filed their nomination form for contesting the election from the two constituency to contest the election and rejected the nomination form of 17 candidates including the petitioner to accommodate the contesting candidates in one E.V.M., which can contain 16 contesting candidates in compliance of the wish of his master who brought the Returning Officer from Tripura to Bihar as both being native of Harnaut are neighbour. Thus, it is evident that the Returning Officer was apparently not impartial and defeated the statutory right of the petitioner to contest the impugned election.

14. Learned counsel for the petitioner further submitted that nomination paper of the election petitioner was improperly rejected under order dated 20.4.2009 with reference to the provisions contained in Sub-Section (2)(c) of Section 36 of the Act but there is hardly any facts stated in the rejection order to substantiate the ground taken in support of the order that the signature of the candidate or the proposer on the nomination paper is not genuine.

15. Learned counsel for the petitioner also submitted that the rejection order dated 20.4.2009, Annexure-7 was received by the election petitioner in connection with nomination form no.56 on 18.5.2009 after petitioner applied for grant of certified copy on 8.5.2009 wherefrom it appears that nomination form of the election petitioner was subjected to scrutiny on 20.4.2009 between 11 A.M. to 3 P.M. in presence of the observers appointed by the Election Commission of India named in the order but those averments appears to be false and incorrect as the said fact is not evident from the cassette furnished by the Returning Officer to this Court which was seen by the Court in presence of the counsel and the parties as therefrom it appears that only Returning Officer was sitting in his Chamber during the scrutiny and none of the observers were seen as the three observers appointed by the Election Commission of India on the date of scrutiny were on visit to Rajgir, Pawapuri in the district of Nalanda and Kakolat water fall in the district of Nawada.

16. Learned counsel for the petitioner further submitted that defect about the part number and roll number of proposer no.7 of the election petitioner as stated in the original nomination form and the voter list is misconceived in view of the provision of Sub-Section-(4) of Section 33 of the Act, in terms whereof discrepancy in the part number and serial number of the proposer as mentioned in the nomination form and the voter list is not a defect and should have been ignored

17. Learned counsel for the petitioner further submitted that from the deposition of the Returning Officer and Addl. District Magistrate(General), Patna, R.W. 1, 2 it is quite evident that R.W. 2 obtained signature in verification over photo copy of part 2 of the nomination form, set no.57 without giving opportunity to the petitioner to produce his one

of the proposer Tapeshwar Thakur for verification of his signature until 21.4.2009 4.15 P.M., though such privilege was allowed to another candidate Hassan Faizi Azami.

18. Learned counsel for the petitioner with reference to deposition of R.W. 2 in paragraph 2 of his cross examination submitted that he had no occasion to go through the Handbook of the Returning Officer issued by the Election Commission of India for conducting the impugned election, yet he was authorised by the Returning Officer to perform the important task of verification of signature of the independent candidates.

19. Learned counsel also submitted that from paragraph 14 of the cross examination of election petitioner it would appear that part no. 190-104 serial no.5211 mentioned in the nomination paper of the petitioner against the name of his proposer no.7 Shafiqur Rahman was verified at the time of filing of nomination paper from the new voter list issued for the impugned election vide serial no. 173 and part no. 178, which is evident from paragraph-3 of the examination in chief of proposer no.7 i.e. Safikur Rahman, P.W. 6.

20. Learned counsel for the petitioner also submitted that rejection of nomination paper of the petitioner with reference to part, serial number of proposer no.7 is not a defect as the same has been considered by this Court in one of the election petition as well as by the Apex Court in the case of Nandiesha Reddy Vs. Kavitha Mahesh, (2011; 7 Supreme Court Cases 721, paragraph 24, 25 whereof has been relied upon, which is quoted herein below for ready reference :-

"24. We are of the opinion that when a nomination paper is presented it is bounden duty of the Returning Officer to receive the nomination, perused it, point out the defect, if any, and allow the candidate to rectify the defects and when the defects are not removed then alone the question of rejection of nomination would arise. Any other view, in our opinion, will lead to grave consequences and the Returning Officers may start refusing to accept the nomination at the threshold which may ensure victory of a particular candidate at the election. This is a fraught with danger, difficult to fathom.

25. Section 33 (4) of the Act, casts duty on a Returning Officer to satisfy himself that the names and the electoral Roll numbers of the candidates and their proposers as entered in the nomination paper are the same as in the electoral rolls and, therefore, in our opinion, the election petitioner for the purpose of maintaining an election petition shall be deemed to be a candidate."

21. Learned counsel for the petitioner with reference to the judgment of the Supreme Court in the case of Viveka Nand Giri Vs. Nawal Kishore Sahi, AIR 1984 Supreme Court 856 placing reliance on Sub-Section (4) of Section 33 of the Act and the passage quoted below reiterated his submission that nomination paper of election petitioner should not have been rejected for giving incorrect part, serial number of his proposer no.7 in the nomination paper.

" The Returning Officer has deposed as RW-7 about the rejection of those four nomination papers EX.2 to (sic) on the above grounds by his orders Exs. B to B-3.

S. 100 (1) (c) of the Act provides that if the High Court is of the opinion that any nomination paper has been improperly rejected it shall declare the election of the returned candidate to be void. On a consideration of the evidence available on the record and the arguments of the learned counsel for the parties in the light of the authorities placed before him the Learned Single Judge found that no nomination paper could be rejected unless the defect is of a substantial character as pointed out even in para 13 (i) of the Handbook for Returning Officers issued by the Election Commission of India and that the difference in the age of the candidate as

given in the electoral roll and the nomination papers is not a material error and no opportunity was given to the candidate, Ram Kumar Jha when the nomination papers were filed on 2.5.1980 to remove any defect though Section 33(4) of the Act lays down that on the presentation of the nomination on papers the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and their proposers as entered in the nomination papers are the same as those entered in the electoral roll. The learned judge held that the rejection of the nomination papers Exts. 2, 2-a and 2-c by the Returning Officer was improper. In that view he allowed the election petition without costs only to the extent of setting aside the appellants election as being void which was the only relief prayed for in the election petition.

Before us, Dr. L.M. Singhvi, Senior Counsel who appeared for the appellant proceeded to draw our attention to the evidence of certain witnesses including that of Ram Kumar Jha's brother Birendra Kumar Jha RW-9 for proving that Ram Kumar Jha had filed the nomination papers pursuant to some collusion with the object of enabling an election petition being filed against any successful candidate. But, for want of specific allegation about any collusion or fraud and also an issue regarding any collusion we declined to hear any argument on the question of collusion. Consequently, the only point which was canvassed before us by Dr. Singhvi appearing for the appellant and Mr. L.R. Singh appearing for the respondent was as to whether the nomination papers of Ram Kumar Jha were improperly rejected by the Returning Officer and the appellant's election is therefore void under Section 100 (1) (c) of the Act."

22. Learned counsel for the petitioner further relied on the following passage in the judgment of Supreme Court in the case of Hira Singh Pal Vs. Madan Lai, AIR 1968 Supreme Court 1179.

" That, however, is not the end of the matter. All that we have to consider in this appeal is whether the Returning Officer was right in rejecting the nomination of the respondent. As mentioned earlier, the errors found in the nomination papers are purely clerical errors. The Returning Officer had the duty to scrutinize the nomination papers when they were presented for finding out whether there were any clerical mistakes in the same. Under that provision he was required to find out whether the names of the candidates as well as their proposers and seconders were correctly mentioned in the nomination papers. He was also required to see whether their place in the electoral roll was correctly mentioned in the nomination papers. Evidently, the Returning Officer failed in his duty. Further, when he scrutinized the nomination papers on January 21, 1967, he had before him all the required information. It may be that while scrutinizing the first nomination paper (marked as No.5) he had no material before him to find out whether the proposer of the candidate was really an elector in the constituency or not, but when he came to the second nomination paper where the proposer's name as well as his place in the electoral roll is correctly mentioned, it was improper on his part to have rejected that nomination paper. It is true that in that nomination paper, it had been mentioned that the candidate's name is found at serial no.504 of part 2 of 9-Arki Assembly Constituency though in fact it is found at serial no.504 in part 12 of that constituency; but from the first nomination paper, the Returning Officer could have easily found out the correct part of the electoral roll. All the required information was before him. Obviously he rejected the nomination papers for the reason that the respondent was only a ■ dummy candidate but that was not a matter for him to decide. If he was a dummy candidate there was occasion for him to withdraw his candidature after the scrutiny of the nomination papers. Therefore, it is quite clear that the respondent's nomination papers were improperly rejected. Such a rejection was impermissible under section 36 and the same is a ground for setting aside the election under section 100 of the Representation of the People Act.

For the reasons mentioned above, we dismiss this appeal but in the circumstances of the case, we direct that the parties shall bear their own costs throughout."

23. Learned counsel for the petitioner further submitted that the last ground taken in support of the rejection order dated 20.4.2009 that the averments made in affidavit supporting form 26 and affidavit, Annexure-1 were not similar is also not a defect for rejecting the nomination form by the Returning Officer as the facts mentioned in form 26 are as per the questionnaire incorporated therein and the contents of affidavit, Annexure-1 is affirmed in terms of the column prescribed therein. According to learned counsel for the petitioner Returning Officer was bent upon to reject the nomination form of the petitioner in favour of respondent no.1 violating the norms for rejection of nomination paper as mentioned in the Act and the Handbook for Returning Officer issued by the Election Commission of India for 2009 elections to ensure victory of respondent no. 1.

24. In the light of the submissions made above, prayer has been made to set aside the order rejecting the nomination paper of the election petitioner and to declare the election of respondent no.1 as void.

25. Learned counsel for respondent no.1 with reference to the averments made in paragraph 21 and 27 of the election petition submitted that election petitioner has challenged the impugned election on two grounds i.e. improper rejection of nomination paper of the election petitioner as also on the ground of corrupt practice but during the trial the ground of corrupt practice appears to have been abandoned by the election petitioner, as such, the averment made in paragraph 27 is fit to be deleted. As regards the allegation of improper rejection of the nomination paper of the election petitioner raised in paragraph 21 of the election petition, it is submitted that the nomination paper of the election petitioner was fit to be rejected on the sole ground that part number and serial number of proposer no.7 of the election petitioner as stated in part 2 of the nomination form of the election petitioner did not match with the voter list. The election petitioner in paragraph 23 of his election petition admits that part number and serial number of proposer no.7 Sri Safikur Rahman mentioned in part 2 of the nomination paper did not tally with the voter list but election petitioner further states in paragraph 23 that it is not a defect. There is no averment in the entire election petition that proposer no.7 Md. Safikur Rahmam is a voter of the constituency with reference to his correct part number and serial number in the voter list. It is further submitted that admittedly part number and serial number of Md. Safikur Rahman proposer no.7 as stated in part 2 of the nomination form of the election petitioner is 190-104 and 5211 which is not correct. It is submitted that election petitioner P.W. 5 in his examination in chief is silent on the issue of correctness or otherwise of part number and serial number of his proposer no.7, as stated in part 2 of his nomination form. It is further submitted that during the cross examination election petitioner disputed the fact that part number and serial number of his proposer no.7 Md. Safikur Rahman did not tally with the voter list. According to him part number, serial number of proposer no.7 Md. Safikur Rahman was verified at the time of presentation of the nomination paper and it is palpably incorrect to state that part number and serial number of his proposer no.7 as mentioned in part 2 of his nomination form is incorrect. According to learned counsel for respondent no.1 part no 190-104 and serial number 5211 is no where mentioned in the voter list of Patna Sahib Parliamentary Constituency, as such, the factum of its verification as sated by the election petitioner is false. In this connection, reliance is placed over paragrah-14 of the cross examination of P.W.-5 which is reproduced below for ready reference :-

"One of the grounds for rejecting my nomination paper under order dated 20.4.2009 is that part number and serial number of my proposer Md. Safikur Rahman did not tally with part no.190-104, serial no.5211 of the voter list of Patna Sahib Assembly

Constituency, which is incorrect as the same was verified at the time of filing of the nomination paper from the new voter list."

26. Learned counsel for respondent no.1 further referred to paragraph- 15 of the cross examination of election petitioner, P.W.-5 where the election petitioner has admitted the statement made in paragraph- 23 of his election petition that he has stated on oath that part number and serial number of his proposer no.7 as indicated in the nomination paper part 2 did not tally with the voter list, which is not a defect, it is further submitted that election petitioner while admitting the statement made in paragraph 23 of the election petition was required to have given the correct part number and serial number of his proposer no.7, if at all the name of proposer no.7 was in the voter list but he was not aware of the same.

27. It is further submitted that neither in the election petition nor in the evidence of election petitioner P. W.-5, there is any whisper that proposer no.7 of the election petitioner Md. Safikur Rahman was a voter in the Constituency together with his correct part number and serial number in the; voter list published for impugned election. In this connection, it is submitted that it is an admitted fact that neither the election petitioner nor anyone on his behalf clarified before the Returning Officer at the time of scrutiny the correct part number and serial number of proposer no.7 of the election petitioner.

28. It is further submitted that Returning Officer R.W.1 in his cross examination has made categorical statement that there is no constituency no. 190 within Patna Sahib Parliamentary Constituency. In the light of the assertion of the Returning Officer election petitioner enquired and discovered that part number and serial number of his proposer no.7 as stated in part 2 of his nomination paper filed for contesting the impugned election is incorrect.

29. It is further submitted that to overcome the aforesaid vital defect about the serial, part number of proposer no.7 the election petitioner after conclusion of the examination of witnesses hunted details and produced Md. Safikur Rahman (proposer no.7) for examination as a witness on 19.1.2012 and examined him with the permission of the Court. In examination in chief proposer no.7, P.W.6 admitted that he has mentioned constituency no. 190 and part no. 104 serial no.5211 in part 2 of the nomination paper of the election petitioner. Having said as above, P.W. 6 further admitted that entries made in part 2 of the nomination paper of the election petitioner against the name of the witness(P. W. 6) was on the basis of voter slip which was given to him for the last assembly election held in the month of November, 2005 and that his name is at serial no.173 of part no. 178 of the voter list issued for the impugned election has not been stated in the election petition.

30. In view of the aforesaid statement made by P.W. 6 learned counsel for respondent no.1 submitted that until the presentation of the nomination paper, its scrutiny and conclusion of the examination of R.W. 1 neither the election petitioner nor any of the witnesses examined on his behalf were aware about the correct position of his proposer no.7 in the voter list published for conducting the impugned election. It is thus submitted that during the scrutiny of the nomination paper before the Returning Officer neither the election petitioner nor any of his representative including proposer no.7 clarified the correct part number and serial number of proposer no.7 which is defect of substantial nature and the Returning Officer had no alternative, except to reject the nomination paper of the election petitioner.

31. To support the aforesaid contention learned counsel for respondent no.1 has relied on the following judgments of the Supreme Court i.e. Brij Mohan Vs. Sat Pal, AIR 1985 Supreme Court 847, paragraphs 20, 22, 25. Lila Krishan Vs. Mani Ram Godara and

others, AIR. 1985 Supreme Court 1073, paragraphs 15, 16. Bhogendra Jha Vs. Manoj Kumar Jha, AIR 1996 Supreme Court :099, paragraphs 6,7, 10.

32. Learned counsel for respondent no.1 next submitted that from the records of the case particularly signature verification report of Sri Bijendra Jha, Additional District Magistrate(General), Patna, R.W.-2 who was assigned specific work of signature verification of the proposers of independent candidates it appears that election petitioner on the date of scrutiny i.e. 20.4.2009 made available 9 out of his 10 proposers for verification of their signature, the signature of proposer no. 10 Sri Manish Kumar Sinha did not tally with the signature earlier put by Sri Manish Kumar Sinha in part 2 of the nomination form of the election petitioner, which is also vital and substantial defect in the light of the provisions contained in Sub-Section 2(c) of Section 36 of the Act. The Returning Officer also noticed the aforesaid defect and rejected the second set of nomination paper, serial no.57 filed by the petitioner on the said ground besides the other grounds taken in connection with nomination paper no.56 filed by the election petitioner.

In this regard, learned counsel for respondent no.1 has further referred to the statement made by the election petitioner in his cross examination that he is not a handwriting expert to comment on the findings of R.W. 2 who was entrusted with the job of signature verification. It is further submitted that election petitioner had only stated that R.W. 2 was not Assistant Returning Officer but was posted as A.D.M. at Patna. It is submitted that from the records i.e. verification report it is apparent that signature of proposer no. 10 put at the time of filling the nonunation form and the other signature put at the time of verification did not tally at all.

34. Learned counsel for respondent no.1 further submitted that election petitioner did not choose to produce Sri Manish Kumar Sinha to state that the signature put by him against his name in part 2 of the nomination form of the election petitioner and the other put by him at the time of verification were his signature.

35. Learned counsel for respondent no.1 further submitted that in paragraph no.8 election petitioner claims that he had filed written application before the Returning Officer to produce his proposer Sri Tapeshwar Thakur for verification of his signature on 21.4.2009 but he neither called that petition from the custody of Returning Officer nor he annexed copy of the said petition with the election petition nor produced the copy of the petition during his evidence and in this background, it is submitted that the plea to produce proposer Tapeshwar Thakur for signature verification on 21.4.2009 is afterthought and fails to inspire confidence, the Returning Officer rightly rejected the nomination paper for failure to produce Tapeshwar Thakur for signature verification.

36. Before proceeding to consider the rival submissions made by the election petitioner and the Returned Candidate, Respondent No. 1 it is necessary to examine the contents of the order dated 20.4.2009 passed by the Returning Officer rejecting Nomination Paper No. 56,57 of the election petitioner.

37. Perusal of the order dated 20.4.2009 passed rejecting Nomination Paper No. 56 of the election petitioner indicates that scrutiny of Nomination Paper No. 56 of the election petitioner was taken up on 20.4.2009 in presence of Observers appointed by the Election Commission of India M/s K. Usha, R.K. Upadhyay and Rahul Kaul. During scrutiny Nomination Paper No. 56 filed by the election petitioner on 18.4.2009 at 11.25 A.M. was perused. Service report of the notice issued for production of the proposers for verification of their signature in terms of Sub-Section (2) (c) of Section 36 of the Act is found preserved with the record. As per the notice candidate was required to make available his proposers in the office of the Returning Officer on 20.4.2009 between 11 A.M.-3 P.M. In spite of notice during scrutiny petitioner or his proposers did not make themselves available for verification of their signature, as such, their signature

put in Part-2 of the nomination-form could not be verified by the Additional District Magistrate (General), Patna who was deputed for such purpose. From perusal of the nomination-form of the election petitioner it appeared that part number and serial number of his Proposer No. 7 is not available in the voter-list. It also appeared that election petitioner has not filled up Part-3 'ka' of his nomination-form as per rule as there is variance in facts stated by him in Form 26, Annexure-1 which is prima facie evident from perusal thereof. In the light of the aforesaid materials, evidence available on record, Nomination Paper No. 56 of the election petitioner was rejected. Having rejected Nomination Paper No. 56 under order dated 20.4.2009 Returning Officer issued corrigendum dated 20.4.2009 observing that there has been clerical mistake in the order dated 20.4.2009 rejecting the nomination paper of the election petitioner and proceeded to substitute the following portion of the order dated 20.4.2009 :-

"During scrutiny the candidate and his proposers were not available for verification of their signature before the deputed Additional District Magistrate General, Patna and their signature could not be verified" by stating that "during scrutiny petitioner made available 9 out of his 10 proposers. Proposer No. 5 Sri Tapeswar Thakur did not appear for verification of his signature and the signature of Proposer No. 10 Sri Manish Kumar Sinha was found different from the signature which was put by Sri Manish Kumar Sinha at the time of filling of the nomination-form" and to the aforesaid extent order dated 20.4.2009 rejecting the nomination paper of the election was modified. Nomination Paper No. 57 of the election petitioner was also rejected under order dated 20.4.2009 on the same and similar grounds as was noticed in the order dated 20.4.2009 passed rejecting Nomination Paper No. 56 of the election petitioner but without issue of any corrigendum substituting the clerical mistake noticed in the order dated 20.4.2009 rejecting Nomination Paper No. 56 of the election petitioner although, such clerical mistake was very much available in the order dated 20.4.2009 rejecting Nomination Paper No. 57 of the election petitioner. From perusal of the two orders dated 20.4.2009 and one corrigendum dated 20.4.2009 rejecting Nomination Paper No. 56, 57 of the election petitioner, it is evident that nomination paper of the election petitioner has been rejected on the following four grounds:-

(a) For the failure of the election petitioner to make available his Proposer No. 5 Sri Tapeswar Thakur for verification of his signature during scrutiny.

(b) Signature of proposer no.10 Sri Manish Kumar Sinha put at the time of filling of the nomination form of the petitioner was different from the signature which he put at the time of verification of his signature during scrutiny.

(c) Part number and serial number of the proposer no.7 of the election petitioner as mentioned in the nomination form part 2 was not available in the voter-list.

(d) Part-3 'ka' of the nomination-form of the election petitioner was not filled up as per the rule in view of difference in the contents of the affidavit supporting Form 26, Annexure- 1, which is prima facie evident from perusal of both the documents.

38. In view of proviso to sub-section (5) of Section 36 of the Act, the Returning Officer, R.W. -I, in my opinion, should have allowed the election petitioner time until 21.4.2009 for making available his proposer no.5 Sri Tapeswar Thakur for verification of his signature over the nomination-form as he had granted such opportunity to another independent candidate Sri Hassan Faizi Azami until 21.4.2009 9.15 A.M. but from Paragraph 26 of his cross- examination it appears that he denied the suggestion that he refused to grant time to the election petitioner to bring his proposer for verification of his signature by 21.4.2009. In the said paragraph R.W. 1 further volunteered that any candidate who asked for time was granted time to produce the proposer for verification of his signature until 21.4.2009. From paragraph 29 of the cross examination of R.W. 1 it,

however, appears that during scrutiny of the nomination paper of the petitioner having seen the entries made against proposer no. 7 R.W. 1 pointed out to the election petitioner that Constituency No. 190 is not within Patna Sahib Parliamentary Constituency but the election petitioner did not accept the suggestion and maintained that the entries made in the nomination paper against proposer no. 7 is correct as he was more concerned about his proposer no.5 Tapeswar Thakur who was not available for verification of his signature on the date of scrutiny i.e. 20.4.2009 as on that day he was away to Jamalpur in connection with marriage of his daughter. In view of the aforesaid evidence of R.W. 1 himself the case of the election petitioner that he asked for time until 21.4.2009 to make available Tapeswar Thakur for verification of his signature but the Returning Officer refused to grant him opportunity to produce Tapeswar Thakur by the next day i.e. 21.4.2009 appears to be more plausible and requires to be accepted in view of the evidence of R.W. 2 in paragraph 11 of his cross examination that after 20.4.2009 no further opportunity was given to the election petitioner to bring his one of the proposers who was not present at the time of verification of signature on 20.4.2009 together with the fact that R.W. 1, 2 have not disputed the fact that another candidate Sri Hassan Faizi Aazmi was allowed such privilege to produce his proposer by 21.4.2009 until 9.15 A.M. In the circumstances, Returning officer was required to have given opportunity to the election petitioner to make available his Proposer no. 5 Tapeswar Thakur for verification of his signature by 21.4.2009 as such privilege was allowed to another candidate Sri Hassan Faizi Azami.

39. The other submission of the learned counsel for the election petitioner that verification of the signature of the proposers was made on the photostat copy of Part-2 of the nomination-form filed by the election petitioner is correct in view of the report of R.W.2 dated 20.4.2009 kept in the record with reference to the nomination-form no. 56 at page 29-30 and therefrom it appears that out of 10 proposers of the petitioner 9 appeared for verification of their signature in connection with nomination form nos.56, 57. Prima facie the signature of Manish Kumar Sinha proposer no. 10 of the petitioner differed from his previous signature put at the time of filling of the two nomination-form(s). The Returning officer having perused the report of Bijendra Jha, R.W.-2 that there was variance in the two signatures of Sri Manish Kumar Sinha put at the time of filling of the nomination-form and at the time of verification of the signature should have asked the election petitioner to produce Sri Manish Kumar Sinha during scrutiny for putting another signature so as to satisfy himself that it was Manish Kumar Sinha who has proposed the election petitioner as Proposer No. 10 in the nomination-form.

40. The submission that Returning Officer was biased against the election petitioner as he did not furnish the copy of the order rejecting the nomination paper of the election petitioner soon after the nomination paper of the election petitioner was rejected on 20.4.2009 is required to be considered in view of Paragraph 28, 29 of the cross examination of the Returning Officer where he has stated that no sooner order rejecting the nomination paper of the election petitioner was passed the same was directed to be given to the election petitioner but if he did not receive the order soon after scrutiny, no such complain was made by him to the Returning Officer as R.W. 1 was not aware of any such complain. In Paragraph 29 of the cross-examination R.W.- 1 further volunteered that at the time of scrutiny of nomination paper having seen the entries made against his proposer no. 7 Returning Officer pointed out to the election petitioner that Constituency No. 190 is not within Patna Sahib Parliamentary Constituency but the election petitioner did not accept the suggestion and maintained that the entries made in the nomination paper against proposer no. 7 is correct as he was more concerned about proposer no.5 Sri Tapeswar Thakur who was not available during scrutiny for verification of his signature.

Copy of the order rejecting the nomination-form no. 56, 57 filed by the election petitioner along with the corrigendum should have been served on the petitioner after order rejecting his nomination paper was passed or in any case soon after publication of the list of the validly nominated candidate on 21.4.2009 at 4.15 P.M. petitioner had to submit requisition dated 8.5.2009 for grant of certified copy of the order dated 20.4.2009 rejecting his nomination paper on the basis of which certified copy of order dated 20.4.2009 rejecting the nomination paper was given to the petitioner on 18.5.2009, which is a serious lapse on the part of the Returning Officer but for such lapse the impugned election of respondent no.1 cannot be held to be void. It is further evident from the record that along with the attested certified copy of the order dated 20.4.2009 which was given to the petitioner on 18.5.2009 in response to his requisition dated 8.5.2009 petitioner was not furnished the copy of the corrigendum dated 20.4.2009 which is also indicative of the ill performance of the statutory duty by the Returning Officer.

41. The last ground taken for rejecting the nomination paper of the petitioner that there is variance in the facts stated in affidavit supporting Form 26 and Annexure-1 is also misconceived in view of the provisions of Section 36 of the Act and instructions issued by the Election Commission of India for conducting 2009 Parliamentary Election vide paragraph 10.1(viii) of the Hand Book for Returning Officer, in terms whereof the Returning Officer should not reject any nomination paper for there being incorrect statements in the two affidavits. Section 36 of the Act and the note below Paragraph 10.1(viii) of the instructions issued by the Election Commission of India clearly require the Returning Officer not to reject any nomination paper if the candidate has filed defective affidavit or has included false information in the two affidavits). In view of the provisions of the Act and the direction of the Commission the last ground taken for rejecting the nomination paper of the petitioner that there is variance in the contents of affidavit supporting Form 26 and Annexure- 1 is misconceived and ought not to have persuaded the Returning Officer to reject the nomination paper of the election petitioner on such ground.

42. The further submission made on the basis of the evidence of P.W.-3, Sanjay Verma in Paragraph 5 of his examination in chief that on the date of scrutiny the Returning Officer did not permit the petitioner and other candidates to examine either their own nomination paper or nomination paper of other candidates violating sub-section (5) of Section 36 of the Act as P.W. 3 and others were not allowed to look into the nomination paper of each other, although they desired to look into the nomination paper of each other cannot be relied upon in view of the categorical denial by the Returning Officer, R.W.-1 in Paragraph 9 of his examination in chief that candidates were given full opportunity and liberty to examine nomination paper of other candidates and scrutiny of nomination papers was performed in presence of Central Observers deputed by the Election Commission of India as well as candidates who were present on the date and time of scrutiny and further statement made by him in Paragraph 18 of his cross-examination that during scrutiny the candidates were asked to wait in the hall with liberty to enter the chamber of the Returning Officer as and when they desired, the candidate whose nomination paper was under scrutiny was asked to be present along with his proposers and further statement made in paragraph 20 of the cross-examination that during scrutiny of the nomination paper the candidate was allowed to come with his proposer whose number was not restricted. In paragraph 21 of the cross-examination he has further stated that it is not correct to suggest that he did not allow even candidate to look into their own nomination paper at the time of scrutiny. Such suggestion is incorrect as Observers were there to check his action. He further stated that even without the presence of the Observers he would have allowed the

candidate to remain present at the time of scrutiny and to see the nomination papers desired by them.

43. The submission of the learned counsel for the election petitioner that defect about part number and roll number of Proposer No. 7 of the election petitioner as stated in the original nomination-form and the voter-list is not a substantial defect in view of proviso to sub-section (4) of Section 33 of the Act and should have been overlooked is misconceived in view of the judgment of the Supreme Court in the case of Brij Mohan Vs. Sat Pal A.I.R. 1985 Supreme Court 847 paragraph 20,22,25, Lila Krishna Vs. Maniram Godara and Ors. A.I.R. 1985 Supreme Court 1073 paragraph 15,16, Bhogendra Jha Vs. Manoj Kumar Jha A.I.R. 1996 Supreme Court 2099 paragraph 6,7,10.

44. In the case of Brij Mohan (supra) Supreme Court considered the case of Sat Pal an elector of the Jind Assembly Constituency who filed election petition stating that Dog Ram was registered as an elector at serial no. 77 in part 39 of the electoral roll of Jind Constituency. Ram Pratap who proposed Dog Ram as candidate was registered as elector at serial number 313 in part 39 of the same constituency. In the nomination paper name and address of Dog Ram was correctly mentioned but there was mistake in part number as for 39, 57 was mentioned due to inadvertence committed by the person who filled up nomination paper. Similarly in the case of proposer Ram Pratap the serial number of the elector and the number of constituency were given correctly but the number of his house was wrongly entered in the column meant for the part number of the electoral roll. These mistakes in the nomination paper were technical in nature and should have been corrected by the Returning Officer at the time of scrutiny. No other candidate or proposer objected to the acceptance of the nomination paper of Dog Ram but the Returning Officer on his own rejected the nomination paper stating that particulars of the candidate and the proposer have been wrongly entered in the nomination paper and the candidate who was present at the time of scrutiny failed to produce the voter list showing particulars as entered in the nomination paper under consideration. Election of the returned candidate Brij Mohan was challenged by an elector on the ground that defects in the nomination paper of Dog Ram were technical in nature and should have been rectified by the Returning Officer at the time of scrutiny. High Court accepted the aforesaid submission and set aside the election of the returned candidate Brij Mohan on the ground that the nomination paper of Dog Ram was improperly rejected by the Returning Officer. Returned candidate filed appeal in the Hon'ble Supreme Court and the Hon'ble Supreme Court reversed the judgment of the High Court holding that nomination paper of Dog Ram was properly rejected as there was defect in the serial, part numbers of the candidate and the proposer in the nomination paper, their names could not be traced in the concerned parts as registered electors. According to the Hon'ble Supreme Court the Returning Officer, therefore, was helpless and asked the candidate Dog Ram to point out the names of self and his proposer in the electoral roll, which Dog Ram failed to point out. It is submitted by the learned counsel for the sole respondent that while upholding the rejection of the nomination paper of Dog Ram the Hon'ble Supreme Court distinguished the judgment of the Supreme Court in the case of Viveka Nand Giri (Sopra) in paragraphs-23, 24 of the said judgment heavily relied upon by the election petitioner.

45. In the case of Lila Krishan (supra) same point was involved as the serial number of the voter list of the proposer of the two candidates, namely, Maniram Chapola and Raj Tilak did not tally with the serial number mentioned in the electoral roll. The proposer of Maniram Chapola was one Brij Bhushan while the proposer of one Raj Tilak was one Upendra Kumar. Brij Bhushan and Upendra Kumar as indicated in the electoral roll was at serial no. 26 and 77 respectively. These numbers have been correctly indicated in form 3A but in the nomination paper the serial numbers have been shown as 126 and

177 respectively. The discrepancy has arisen on account of appearance of the figure T before the correct number. When scrutiny was taken up Maniram Chapola and Raj Tilak were not present before the Returning Officer. Similarly proposers Brij Bhushan and Upendra Kumar were also absent. The High Court took the view that it was the obligation of the Returning Officer to verify the electoral roll and to find out the serial number, the mistake if any was not of substantial character so as to expose the nomination paper to rejection and the rejection on such a ground was improper and set aside the election of the returned candidate. Hon'ble Supreme Court, however, reversed the judgment holding that to cast obligation on the Returning Officer to look through the entire electoral roll of a particular part with a view to find out the identity of the proposer is not the requirement of law to read such obligation on the part of Returning Officer is likely to lead to an unworkable position. In one part of the electoral roll on the average names of about a thousand voters appeared Out of thousand names it is quite possible that there would be more than one voter by the same name. Identification of any particular voter out of such list even when there are more voters with the same name is possible only with further reference to the father's name. To cast obligation of verifying the entire electoral roll of a particular part is actually requiring the Returning Officer to do almost an impossible feat. No one was available when the nomination paper of Maniram Chapola and Raj Tilak was taken up for scrutiny to indicate that the serial number of their proposer Brij Bhushan and Upendra Kumar was 26 and 77 and not 126 and 177, as is appearing in the nomination paper and the Hon'ble Supreme Court considering the import of the provisions of Sub-Section-(4) of Section 33 and Sub-Section-(1) to (4) of Section 36 of the Act reversed the judgment of the High Court and held that the nomination paper of Maniram Chapola and Raj Tilak was rightly rejected as incorrect serial number of their proposer was indicated in the nomination paper, which was not even corrected at the time of the scrutiny as none was available to correct the defect.

46. In the case of Bhogendra Jha (supra) part number of one of the proposers was wrongly mentioned in the nomination paper which was not corrected by the candidate or his proposer at the time of scrutiny of nomination paper and the Returning Officer had no option but to reject the nomination paper of Manoj Kumar Jha. Patna High Court set aside the election of the returned candidate Bhogendra Jha at the instance of Manoj Kumar Jha. Hon'ble Supreme Court, however, reversed the judgment of the Patna High Court holding that nomination paper of Manoj Kumar Jha was properly rejected as it was not the duty of the Returning Officer to make a roving and fishing enquiry to find out the serial, part number of the proposer which was the duty of the candidate/proposer to furnish correct serial, part number in the nomination paper.

47. In view of the authoritative pronouncement of the Supreme Court in the case of Brij Mohan, Lila Krishan, Bhogendra Jha (supra) any defect in the part, serial number of the proposer and the candidate mentioned in Part-2 of the nomination-form is a substantial defect and could not have been ignored/overlooked by the Returning Officer during scrutiny in the light of the provisions of proviso to Sub-section (4) of Section 33 of the Act and reliance placed by the learned counsel for the election petitioner over the judgment of the Supreme Court in the case of Hira Singh Pal Vs. Madan Lai (Supra) and Viveka Nand Giri (supra) appears to be misconceived in view of the statement made by the election petitioner in paragraph 23 of the election petition that part number and roll number of Proposer No. 7 as stated in Part-2 of his nomination paper did not tally with the voter-list and the evidence of Proposer No. 7 i.e. P.W. 6 that in Part-2 of the nomination paper filed by the election petitioner his name is at serial no. 7 and against his name Constituency No. 190, Part No. 104 and serial no. 5211 has been mentioned, which is on the basis of the voter-slip given to him for the last Assembly Election held in the month of

November, 2005 and his present Serial No. 173 and Part No. 178 of the voter-list has not been stated in the election petition. It may be stated here that Returning Officer, Respondent No. 1 has categorically stated in paragraph-29 of his cross-examination that at the time of scrutiny of the nomination paper having seen the entries made against Proposer Serial No. 7 he pointed out to the election petitioner that Constituency No. 190 is not within Patna Sahib Parliamentary Constituency but the election petitioner did not accept the suggestion and maintained that the entries made in the nomination paper against Proposer Serial No. 7 is correct.

48. Reliance placed by the election petitioner over the observations made in paragraph 13 of the judgment of the Supreme Court in the case of Nandisha Reddy Vs. Kavitha Mahesh 2011(7) SCC 721 paragraph 13 is also misconceived. It appears in the said case the election petition was filed on the ground of improper rejection of the nomination paper under Section 100(1)(c) of the Act. The Returned Candidate filed petitions under Order 6 Rule 16 of the Code of Civil Procedure stating that the election petition does not contain material facts and another petition under Section 83, 86 of the Act read with Order 7 Rule 11 of the Code of Civil Procedure for dismissal of the election petition. Both the aforesaid petitions were dismissed by the High Court which was challenged before the Supreme Court. Supreme Court dismissed the appeal holding that the ground of improper rejection of the nomination paper shall be considered during trial of the election petition.

49. Notwithstanding my observations and findings in paragraphs 38 to 41 above, neither the order dated 20.4.2009 rejecting the nomination form of the election petitioner can be set aside nor the impugned election of respondent no.1 can be declared void in view of my finding in paragraphs 43 to 47 above that petitioner refused to correct the part, serial number of his proposer no.7, P.W. 6 mentioned in the nomination paper, part 2 of the petitioner, which is admitted in paragraph 23 of the election petition, paragraph 14 of the cross examination of election petitioner, P.W. 5 and paragraph 3 of the examination in chief of proposer no.7, P.W. 6 duly corroborated by the Returning Officer, R.W. 1 in paragraph 29 of his cross examination.

50. In the result, the election petition is dismissed.

(V. N. Sinha, J)

Patna High Court, Patna
Date the 6th day of
November, 2012
Rajesh/A.F.R.

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